

BACKGROUND PAPER FOR HEARING

BOARD OF OPTOMETRY

IDENTIFIED ISSUES, QUESTIONS FOR THE BOARD, AND BACKGROUND CONCERNING ISSUES

PRIOR SUNSET REVIEW: The Board of Optometry (Board) was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) four years ago (1997-98). The JLSRC and the Department of Consumer Affairs (DCA) identified three issues and made recommendations regarding them. The first was: Should the state's licensing of optometrists be continued? Both the JLSRC staff and the DCA recommended continuation and the JLSRC voted 6-0 to adopt that recommendation. The second was: Should an independent Board of Optometry be continued to administer the optometry licensing laws or should it be sunset and its operations and functions be assumed by the DCA? Both the JLSRC staff and the DCA recommended continuation of the Board, and the JLSRC voted 6-0 to adopt that recommendation. The third was more controversial and was: Should the composition of the Board of Optometry be changed? The Board had (and has) 9 members – 6 licensed optometrists and 3 public members. Both the JLSRC staff and the DCA recommended increasing the representation of the public members on the Board. The JLSRC staff specifically recommended removing one licensee optometrist member and adding one public member, which would still maintain the Board at 9 members, but with a composition of 5 optometrists, and 4 public members. However, the JLSRC did not adopt the recommendation of its staff or the DCA by a vote of 2 in favor and 3 against.

GENERAL BACKGROUND AND DESCRIPTION OF THE BOARD

The Board of Optometry was created by the California Legislature in 1913. The Board currently licenses approximately 7700 optometrists and 400 optometric corporations. The Board is composed of 9 members – 6 licensed optometrists and 3 public members. Currently, the Board has three licensed optometrist member vacancies (Governor appointments). The Board has 8 standing committees whose members are appointed by the Board's President. For 2001 they are: Administrative (Dr. Easton – licensee), Regulations (Dr. Grant – licensee), Legislation (Mrs. Vogel – public), Examination and Licensing (Dr. Grant – licensee), Credentials (Mrs. Vogel - public), Continuing Education (Dr. Easton - licensee), Enforcement (Dr. Titus – licensee), and Public Relations (Mrs. Gee). The Board employs one Executive Officer and 6 additional staff persons.

The Board has an annual budget of approximately \$1.1 million, a fund reserve of 11.6 months as of July 1, 2001 which is projected to drop to 5.9 months by July 1, 2004. The Board's licenses are issued for two years, and to become a licensed optometrist an applicant must be a high school graduate, obtain an optometric doctorate degree (O.D.), pass Parts I, II, and the Clinical Skills portion of Part III of the National Board of Examiners in Optometry's national exam, and pass the California Patient Management and Laws and Regulations examinations. The Board offers its licensing examination two times a year – January and June – with the January exam consisting mainly of applicants who have failed the previous June exam. To renew a license, an optometrist must pass 40 hours of continuing education (CE) every two years or 50 hours if the optometrist is certified to use therapeutic

pharmaceutical agents (TPAs). TPA-certified optometrists must fulfill 35 of their required 50 hours on the diagnosis, treatment and management of ocular disease as follows: 12 hours on glaucoma, 10 hours on ocular infections, 5 hours on inflammation and topical steroids, 6 hours on systemic medications, and 2 hours on the use of pain medications.

Currently, there is no reciprocity with other states. However, the Board recently adopted a regulation – now pending approval – which would accept all parts of the NBEO exam in lieu of the Board-administered exam, as is currently done by 37 other states. Since most new optometry school graduates currently take all three parts of the NBEO exam, applicants who have passed that exam could become licensed in California and the other 37 states by passing only a state-specific jurisprudence exam (e.g., for California – its Laws and Regulations exam).

Over the past four years the number of complaints received by the Board has decreased somewhat, but it has increased the number of its investigations, increased the average number of cases it refers to the Attorney General's Office (AG) and has slightly increased the average number of disciplinary actions (accusations) it takes each year (average of 3 cases per year.) While the overall average cost per disciplinary case is higher than it was four years ago, it has decreased in the past three years. However the overall average cost of disciplinary investigations and experts has almost doubled, while the average cost per case referred to the AG has decreased. The average time frame from opening to completion of an investigation has increased, while there has been a decrease in the number of days it takes to close cases that have been referred to the AG. The Board first promulgated regulations to issue administrative citations and fines in 1999 – with the fines ranging from \$50 to \$2500 per violation. The Board does not have a diversion program. Pursuant to the Board's disclosure policy the Board discloses all disciplinary cases following the filing of an accusation by the AG.

Significant legislative change. Since the Board's last sunset review the scope of practice of licensed optometrists was significantly expanded by the enactment of SB 929 (Polanco, Chapter 676 – Statutes of 2000) which became effective this past January. That bill specified additional diseases and conditions optometrists may treat (in particular, certain types of glaucoma) with specified medications. The bill provided requirements for mandatory consultation and referral by an optometrist to an ophthalmologist in specified circumstances, and authorized the Board to certify a TPA certified optometrist to perform lacrimal irrigation and dilation of patients over age 12, provided the optometrist has completed at least 10 of the former procedures under the supervision of an ophthalmologist. The bill authorized the Board to certify a TPA optometrist to treat primary open angle glaucoma in patients over the age of 18, provided the optometrist has completed specified educational requirements and has provided treatment for at least two years to at least 50 glaucoma patients in a collaborative relationship with an ophthalmologist, as specified. Further, the bill also specified additional duties that an unlicensed assistant may perform under the direction responsibility and supervision of an ophthalmologist or optometrist.

CURRENT SUNSET REVIEW ISSUES

BOARD POWERS, DUTIES and COMPOSITION ISSUES

ISSUE #1: The Board has been unable to hold one regular business meeting in the past year, and problems and concerns regarding the management of the have been raised by the Board's three public members.

Question #1 for the Board: *Why has the Board had problems this past year in obtaining the necessary quorum to fulfill its statutory responsibility to conduct business and administer the optometry licensing laws? What business items or responsibilities has the Board been unable to perform as a result of its inability to hold regular business meetings (e.g., licensee reinstatements, examinations, promulgation of regulations, enforcement)? Is the Board capable, in the foreseeable future, of holding regularly scheduled meetings on a quarterly basis to conduct its normal business? If not, why? If not, what can be done so that the Board can properly function? How many committees does the Board have, who appoints their chair and members, how many members are on each committee, and how often did they meet during the past year? Can other Board members participate on committees to which they have not been appointed?*

What is the response to the concerns and problems raised by the Board's three public members in their Sunset Review Minority Report? Given the explicit dissatisfaction of the Board's three public members with the operation of the Board – what actions has the Board taken or recommended be taken to address the concerns raised by the public members? Has the Board, its members or its executive officer contacted the Department of Consumer Affairs or the Governor's Office to request that the vacancies on the Board be filled by appointment? If so, when and what has been the response to date? What should be done if the Board continues to be unable to perform its statutory administrative responsibilities?

Background: The Board's last regular business meeting was held over a year ago, on December 11 & 12 in 2000. A schedule sent to all Board members in January listed the proposed schedule of dates for four regular Board meetings in 2001 (March, June, September, and November), as well as one special hearing on a proposed regulation to adopt Part III of the National Board of Examiners in Optometry (NBEO or national exam) in lieu of the Board-administered practical exam in optometry. However, during 2001, the only meetings at which the Board could obtain the necessary attendance of sufficient members to meet its 6-member quorum requirement was its February 15 regulatory hearing on adoption of the national exam and one special meeting on August 29, brokered by the Department of Consumer Affairs, just to deal with submission of the Board's Sunset Review Report and to approve the Psychometric Audit of the national exam so that it could be used for the Board's next licensing examination scheduled for January 2002. [Note: The terms of two licensee members of the Board expired in June of 2001, leaving the 9-member Board with a bare quorum of 6 members - 3 licensee & 3 public members.]

A meeting of Board members held in July was only a committee meeting since there was an absence of a quorum. The Board's November 16-17 meeting was reschedule to November 30 – December 1 to accommodate conflicts in Board members' schedules. However, that meeting had to be cancelled last

week following notification by the Board's three public members that they would not attend, citing an absence of an opportunity to have input to the meeting agenda or to have reviewed a preliminary agenda prior to it being sent out.

The Board's "official" Sunset Review Report was adopted by a majority board vote at its August 29 special meeting and submitted to the JLSRC on September 1. However, citing disagreement with the manner in which the August meeting was conducted, the Board's three public members submitted a Sunset Review Minority Report dated September 17, 2001, in which they expressed their concerns both with the August meeting and with problems they believe have occurred with the management and operation of the Board over the past several years. A summary of their concerns or problems with the Board were:

- Board members are not provided with accurate or sufficient information in a timely manner on which to make their decisions.
- No board meetings were conducted for approximately 10 months in 1999.
- Public members' repeated requests for a board newsletter received no response until the August 2001 board meeting, and public board members' work on newsletters was never published.
- The board has failed to promulgate regulations to implement the provisions of SB 929 (Polanco, Chapter 676 – Statutes of 2000) which significantly expanded the scope of practice of optometrists and optometric assistants.
- It took many board meetings and memos to overcome the objections of licensee board members and the Executive Officer to set up a toll-free telephone number for the board.
- The board's committees are run by the board's Executive Officer and staff, not the committee's board members, and public board members are not appointed to nor allowed to provide input to meaningful board committees.
- Board business (e.g., meeting minutes, agendas, expense reimbursement claims) is not conducted in a timely fashion.
- Board members are not provided with adequate information about nor included in the Board's enforcement responsibility or its Enforcement Committee, and there has been no closure regarding recommendations that have been made by the public members.
- Board decisions (e.g., re adoption of the national licensing exam) are not based on all the necessary information but rather based on the personal interests and opinions of particular licensee board members.
- Board decisions only reflect the interests of the Board's licensee member majority; board composition should be changed to eliminate the licensee member majority.
- Board meetings and hearings are not adequately publicized, are not held in convenient or publicly accessible locations, are scheduled for longer than is necessary, and the agendas inaccurately reflect the timing and length of agenda items.

While the Board's staff has continued to conduct the day-to-day business of the Board, the Board itself has been confronting an apparent stalemate between its licensee and public members in being able to meet and decide on policies, regulations, petitions for license reinstatements, or recommended decisions in disciplinary cases.

ISSUE #2: Should the composition or membership qualifications of the Board be changed?

Question #2 for the Board: *Should the ratio of licensee to public member be changed to increase the representation by public members? If the public member representation is increased, should it be done by replacing a licensee member or members (perhaps through attrition as a position becomes vacant) or by increasing the size of the Board? What are the Board's conflict of interests provisions for the selection and participation of its licensee and its public Board members? Are these adequate to insure that the Board operates in the public's interest rather than being influenced by their own personal interests? Should they be made more stringent to avoid either the appearance or reality of improper self-interest?*

Background: During the Board's prior Sunset Review in 1997-98, the Department of Consumer Affairs recommended increasing the public membership on the Board to improve its balance consistent with the Department's general recommendations that its regulatory boards should have an odd number of members and a public member majority. The staff of the JLSRC staff concurred with the Department and recommended adding one more public member and removing one of the optometrist members – retaining a 9-member Board with 5 public and 4 licensed optometrist members. However, neither the Board nor the JLSRC itself agreed with that staff recommendation and the JLSRC decided **not to adopt** that recommendation on a vote of 2-3.

In support of its recommendation in 1997/98, the JLSRC staff wrote:

“The Department and Committee staff believe the current composition of the nine-member Board of Optometry, 6 optometrists and 3 public members, is *overbalanced toward optometrist members*. The Joint Committee may wish to consider converting one of the optometrist positions to a public member.

This recommendation is based on the belief that a regulatory board dominated by professional members (a 2-to-1 majority in this instance), may tend to place greater emphasis on issues of competence (e.g., examinations, continuing education, expanded scope of practice) and correspondingly less emphasis and resources on consumer education/information, and enforcement. And, while it generally functions efficiently, the Board of Optometry may be a case in point.”

This year the Board's three public members have recommended that the composition of the Board be changed to reduce the number of licensed optometrist members, and to add either a licensed ophthalmologist or public members. The public members believe that the Board's actions are controlled by the interests of its licensee member majority, rather than the public interest.

Further, the Board of Optometry is required to hold at least one meeting a year at which its licensing exam must be given. However, the Board generally schedules four meetings a year to be held in both Northern and Southern California. The nine-member Board (six licensee and three public members) has a statutory quorum requirement of six members, currently has three licensee-member vacancies (one since June 2000 & two more since June 2001), and has had difficulty in the past year obtaining a quorum to conduct its meetings.

Based upon the apparent stalemate between the Board's public and licensee members, the JLSRC may want to consider changing the composition of the Board and the qualifications for its members. Some state regulatory boards within the Department of Consumer Affairs have additional requirements or limitations on the qualifications of its members. These can include that licensees represent particular backgrounds within the profession or types of practice, that conflict of interest provisions be more far reaching, and in an exceptional case that licensees of another profession be included on a Board (e.g., Respiratory Care Board.) The purpose of these additional requirements is to assure that the Board has the benefit of a broad cross-section of professionals involved in a board's regulation, that professionals working in different circumstances are represented, and that members are free of even apparent personal sources of conflict of interest. For this board, such additional requirements might include assuring that its licensed optometrist members represent both licensees working in private practice as well as those working as employees in corporate settings.

Regarding the Board's *efforts to protect consumers* since its last sunset review, the Board has adopted a regulation to require that optometrists post a conspicuous notice in their offices that federal law requires that patients be given a copy of their spectacle (eyeglasses) prescription, but that the law does not require the optometrist to release a contact lens prescription. Board staff have recommended that the Board go further and adopt a state regulation to provide patients with the right to obtain their contact lens prescription upon request, unless there are significant medical reasons not to do so. The Board's attorney has advised that the Board has the necessary statutory authority to adopt such a regulation. This regulatory proposal is pending before the Board for action. Also, the Board has instituted a toll-free "800" public telephone number for the Board.

In the area of *enforcement*, the Board's statistics show that 46% of its complaints come from consumers and that "unprofessional conduct" is the most often alleged violation. "Unprofessional conduct" includes allegations of patient abandonment, breach of confidentiality, failure to release records, unethical practices, theft, or rendering of unauthorized professional services. The Board's report did not breakdown its enforcement statistics by type, but show that while the number of complaints have been declining over the past four years (from 308 to 240), the number referred for investigation have increased (from 44 to 66 in 2000/2001), the number of accusations filed has varied from 2 in 1997/98 to 12 in 1998/99 and back down to 3 in 2000/01, and the number of formal disciplinary actions taken have declined from 12 in 1997/98 to 7 in 2000/01.

BUDGETARY ISSUES

ISSUE #3: The August 2001 Department of Finance fiscal controls audit of the Board found several deficiencies in the Board's internal fiscal controls and made recommendations to correct them.

Question #3 for the Board: *What deficiencies did the audit reveal and what was the Board's response? Does the board foresee any problems with rectifying the deficiencies disclosed by the DOF audit and carrying out the recommendations with which it has concurred? Will the DOF respond to the Board's written response to the audit, for example, in its final audit report? Is the Board required to provide subsequent reports to the DOF regarding the implementation of the recommendations? Have there been any discussions between the Board and the Department of Consumer Affairs regarding whether a "program audit" will be conducted? Over the past few years, what information*

has been provided to board members regarding the Board's budget, expenditures and revenues? In what form has this information been provided and at what frequency?

Background: All three public Board members have expressed concerns regarding the management of the Board and inability to obtain regular information regarding the Board's budget, expenditures, and revenue.

At the request of the Department of Consumer Affairs, the Department of Finance (DOF) pursuant, to an interagency agreement recently conducted an audit review of the Board's internal fiscal controls. The DOF's draft audit report made several findings and recommendations pertaining to the Board's need to take physical inventories of and tag board property, maintain subsidiary property ledgers, submit monthly bank statements on a timely basis, process purchase invoices in a timely manner, and maintain independent leave balance reports. In its response to the DOF, the Board agreed with the audit findings and committed to taking corrective actions steps to comply with the audit recommendations. The audit did not review programmatic controls over the Board's service quality and operational efficiency – including management's effectiveness to accomplish desired performance through effective strategic planning, program budgeting, supervision, and fiscal discipline.

ISSUE #4: The Board's reported fund reserve exceeds its statutory maximum. Is the Board satisfactorily responding to this situation?

Question #4 for the Board: *Has the Board reconciled its fund analysis figures with those of the department? Are the amounts reflected in the Board's report accurate and, if not, what are the actual figures? When will the Board's reserve meet the statutory six-month limit? Is there a need to decrease licensing fees or increase the Board's base budget for any items?*

Background: The Board reports that it had a fund reserve at the end of the 2000/2001 fiscal year equaling 11.6 months operating expenses and has a statutory limit of six months reserve. The Board reported that the Department of Consumer Affairs' fund analysis reflected a reserve level of only 6.5 months at the end of the 2000/2001 fiscal year, and that the Board would. The Board indicated that it will do an additional analysis, given the expenditure and revenue patterns, to determine whether a decrease in renewal fees is warranted.

LICENSURE ISSUES

ISSUE #5: Has the Board satisfactorily responded to the recent legislative expansion in the scope of practice for both optometrists and unlicensed optometry assistants?

Question #5 for the Board: *What was the Board's involvement in developing the provisions of SB 929 (Polanco, Chapter 676 – Statutes of 2000) prior to its enactment? What actions has the board taken in order to implement SB 929? Is the board proposing to adopt regulations regarding the glaucoma certification provisions of the bill? If so, what is being proposed? If not, why, and is the board proposing any less formal action (e.g., newsletter article, notice to licensees, etc.) regarding the bill's implementation? How did SB 929 expand the duties that unlicensed optometric and unlicensed*

medical assistants are allowed to perform? What specific tasks are involved in those duties? Why does the board believe that its proposed regulation on this will assure that those duties are performed in a safe and competent manner? What are the chronology and the status of that regulation? What process did the board use to determine whether regulations are necessary to implement this statute? What is the board's response to arguments that further clarification or specificity by the board is required to properly implement this statute with respect to either its glaucoma or optometric assistant provisions?

Background: The three public members in their Minority Report contend that the board has failed to propose adopting regulations that are necessary regarding the provisions of SB 929 (Polanco – Chapter 676 of 2000) that provided for the board's certification of optometrists to independently treat glaucoma following collaboration with ophthalmologists in the treatment of 50 glaucoma patients. Regulations regarding the expanded scope of practice of unlicensed optometric assistants have also been proposed but the Board has not taken any formal action to promulgate such regulations. (Note: The Board has not been able to hold a regular Board meeting to do so since December of 2000.)

One public board member has expressed that her request to be appointed to the regulation committee was not approved by the Board's President who makes the appointments to the Board's various committees. Only one licensee member was appointed to the Board's standing Regulations Committee for 2001. However, a special committee composed of that public member, the licensee member of the standing regulations committee and staffed by the Board's Executive Officer, was appointed by the Board's President on November 7, 2000 to discuss the implementation of SB 929 and develop recommendations for its implementation. That special committee's recommendations were presented at the Board's December 1, 2000. In response to those recommendations, the Board decided to have its staff develop of form for the glaucoma collaboration provision of the bill, have staff draft proposed language re performance of duties by an unlicensed optometric assistant and bring it back to the Board for consideration, have staff research the issue of the definition of "consultation" as used in the bill, and took no action on two other items. Except for development of the form by staff, the Board has not been able to meet to pursue the other implementation actions it had decided it would pursue.

EXAMINATION ISSUES

ISSUE #6: The Board has voted to eliminate using its own licensing examination in favor of using the National Board of Examiners in Optometry (NBEO) examination.

Questions #6 for the Board: *What assessment or review did the Board do that led to its decision to accept passage of all portions of the National Board of Examiners in Optometry examination (NBEO or national exam) in lieu of requiring license applicants to pass a California developed and administered practical licensing exam? Prior to its vote to adopt the national exam, how did the Board establish that the NBEO exam properly tested California's license applicants to assure their minimum competency to practice within their scope of practice in California? What was the chronology of events involved with the Board's adoption of a proposed regulation to use the national exam? What prompted the recent audit of the national exam by the Board, what were the findings of that exam audit? What is the current status of that regulation? When is the Board's next licensing exam and when is adoption of the national exam expected to occur? Will a change in the examination fee paid by license applicants be necessary as a result of adoption of the national exam?*

Background: The public board members, in their Minority Report, have expressed concerns that the Board's decision to move to adopt the national exam was prompted by the licensee member of the Board who has been in charge of California's exam but will be leaving the Board in the near future and is involved with the administration of the national exam. Following a formal regulatory hearing last February, the Board adopted a regulation – now pending approval – which would accept all parts of the NBEO exam in lieu of the Board-administered exam, as is currently done by 37 other states. Currently the Board requires passage of Parts I, II, and the Clinical Skills portion of Part III of the national exam plus passage of the Board's own patient management and laws and regulations exams. In essence, the proposed exam would now add passage of the remainder of Part III of the national exam instead of the Board's Patient Management exam – but still require license applicants to pass the California laws and regulations exam.

Following submittal of the Board's proposed regulation to the DCA, the DCA pointed out that an audit should be performed on the national exam to determine if it met California's standards for exam administration. That Board's regulatory proposal was held back pending the completion of the audit. The Board contracted to have the audit performed and the audit report was submitted on November 19. The audit concluded, with reservations, that the national exams are valid measures of optometric competencies, but made recommendations that were believed would enhance the validity of the examinations. The Board's sunset report states that the Board will consider moving in the direction of online license renewal if a pilot project in which the Board of Registered Nursing is involved proves successful.

CONTINUING COMPETENCY ISSUES

ISSUE #7: Should the criteria and process for approving mandatory continuing education courses and providers be changed. In particular, should all courses and course providers that are approved by the Medical Board of California for mandatory continuing medical education also qualify for mandatory continuing education for licensed optometrists?

Question #7 for the Board: *What criteria does the Board use for its approval of education courses and providers for mandatory continuing education? Why are continuing education courses officially sponsored or accredited by any accredited school or college of optometry given blanket pre-approval? What assurances are there that such courses will in fact meet the criteria for continuing education courses approved by the Board (but not made applicable in regulation to courses by schools/colleges of optometry?) Will coursework on subject areas that are studied as part of the curriculum of an approved school of optometry (e.g., general human diseases or conditions not specifically involving the eyes or related structures) also qualify for approval as continuing optometric education?*

Background: The optometry licensing laws require the Board to adopt regulations that require, as a condition of renewal, that all licensees submit proof satisfactory to the Board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the Board or by other means deemed equivalent by the Board. Concerns have been raised that the quality of CE courses has declined since completion of CE became mandatory – essentially insuring a “captive audience” of persons who must take approved CE. And it has been proposed by at least one licensee that all

mandatory CE that has been approved by the Medical Board of California for physicians should also be accepted as qualifying for the mandatory CE requirements in optometry – the contention being that medically-related coursework is relevant to the practice of optometry and constitutes a required part of the approved educational coursework for obtaining an initial license.

To renew a license, an optometrist must pass 40 hours of continuing optometric education (CE) every two years or 50 hours if the optometrist is certified to use therapeutic pharmaceutical agents (TPAs). TPA-certified optometrists must fulfill 35 of their required 50 hours on the diagnosis, treatment and management of ocular disease as follows: 12 hours on glaucoma, 10 hours on ocular infections, 5 hours on inflammation and topical steroids, 6 hours on systemic medications, and 2 hours on the use of pain medications. Apart from the above mandatory CE requirements, the Board may adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation.

In addition, Board regulations require each licensee to complete 20 hours of formal CE course work approved by the Board within the year immediately preceding the renewal deadline. No more than 4 hours of course work can be in the area of patient care management, and courses in business management shall not be approved. The regulations limit use of specified alternative methods for meeting the CE requirements to one half of the 20 hours of required course work. The regulations require that all licensees maintain current certification in cardiopulmonary resuscitation (CPR) from approved providers

CE programs that have been approved by regulation as meeting the Board's required standards include: (1) CE sponsored or accredited by any accredited school or college of optometry, (2) CE offered by any national or state affiliate of the American Optometric Association, the American Academy of Optometry, or the Optometric Extension Program, or (3) CE approved by the International Association of Boards of Examiners in Optometry known as COPE (Council on Optometric Practitioner Education). Further, CE meeting the criteria specified below may be approved by the Board after submission of a program, schedule, topical outline of subject matter, and curriculum vitae of all instructors to the Board's Executive Officer at least 45 days prior to the date of the program. The criteria for Board approval are: (1) Whether the program is likely to contribute to the advancement of professional skill and knowledge in the practice of optometry, (2) Whether the speakers, lecturers and others participating in presentation are recognized by the Board as being qualified in their field, (3) Whether the proposed course is open to all licensees, and (4) Whether the CE provider agrees to maintain and furnish records of course content and attendance as the Board requires for a period of at least three years from the date of the course.

ENFORCEMENT ISSUES

ISSUE #8: The Board reports an increase in its enforcement activity and related expenditures since its last sunset report in 1997, but also reports an increase in the amount of time it takes to complete a disciplinary case. Further, the Board has had to seek deficiency funding for enforcement purposes over the past two fiscal years.

Question #8 for the Board: *What accounts for the increase in both enforcement activity and delays in completion of the pre-accusation and post-accusation time frames? Does the pre-accusation time frame include time that the case is still at the Board as well as after it has been referred from the*

Board to the AG but before an accusation is filed? If so, does the Board have data that breaks out the time cases are at each stage? What does the Board believe can be done to reduce these increases in the time it takes to complete its disciplinary cases? In what years since its last sunset review have the Board's expenditures for enforcement exceeded its budgeted appropriation? If so, in which areas of enforcement did this occur? In what years did the Board submit a deficiency request for additional expenditure authority (appropriation) and what was the cause of the deficiency (ies)? Does the Board anticipate the need for a deficiency request this year? Has the Board's budget for enforcement been increased? Does the Board need an increase in its base budget, particularly for enforcement? If so, what would those additional monies be used for?

Background: The three public board members in their Minority Report expressed concerns that they are not satisfactorily informed, or are misinformed, regarding the Board's enforcement program and related budget – which led to their decision to drop further investigation in one particular disciplinary case.

The Board's report shows a decline in complaints made to the Board, an increase in the number of investigations initiated, an increase in the average number of cases referred to the Attorney General's Office (AG) for initiation of formal disciplinary action, and a slight increase in the average number of disciplinary actions taken. The Board reports that it has increased its expenditures for enforcement by 15%, from an average of 41% in 1997 to 56% in 2001. However, during that same period the average amount of time it takes to process complaints, investigate and process complaints has increased from 805 days (1997/98) to 914 days (2000/01), or an increase of 109 days. The bulk of that increase appears to occur after the investigation is completed and either prior to the filing of an accusation by the AG or following the filing of the accusation but before the conclusion of the case ("post-accusation").

The Board has experienced increased disciplinary workload that resulted in the Board filing Deficiency Requests to obtain deficiency funding (additional funds appropriated beyond amount initially budgeted) over the past two fiscal years (1998/99 & 1999/2000.) In particular, as has been the case with some of the other licensing boards in the Department of Consumer Affairs, the deficiency resulted in part due to unanticipated Attorney General enforcement costs that had led to expenditure of all the funds that had been budgeted and appropriated for that purpose in those two fiscal years.

CONSUMER EDUCATION/INFORMATION AND SATISFACTION

ISSUE #9: There is still relatively high dissatisfaction with the Board by those who file complaints, but the Board has made significant improvements in making its existence known to and communicating with complainants.

Question #9 for the Board: *Please explain what efforts the Board has made to improve communication with complainants, why it believes that dissatisfaction with the outcome of the consumers' complaints is still relatively high, and what other improvements the Board intends to make to provide better overall service to complainants.*

Background: The satisfaction survey of complainants conducted by the Board for its prior 1997/98 sunset review indicated that 26% of respondents were satisfied that the Board's existence was well known, 79% were satisfied with knowing where to file a complaint, 55% were satisfied with the outcome of their complaint case, and 72% were satisfied with the Board's overall service or effectiveness. The complainant survey conducted by the Board as a part of this year's sunset review process shows that for 1999 & 2000, 100% of respondents were satisfied with knowing where to file a complaint and whom to contact, 60% (1999) & 75% (2000) were satisfied with the final outcome of their complaint, and 80% (1999) and 66% (2000) were satisfied with the overall service provided by the Board.

ISSUE #10: Should the Board be doing more to publicize its existence and regulatory role, and should it be doing more to educate and inform the public regarding the services provided by optometrists?

Question #10 for the Board: *How does the Board publicize its existence, its regulatory role over optometrists, and its public board meetings. What process is used to select board meeting locations and sites? Could the Board select locations or sites that are more accessible to the public, particularly the disabled? What is the status of the Board's newsletter? What information does the Board provide the public and how does it provide that information? What are the most frequent sources of consumer complaints to the Board? Does the Board plan to provide information, in pamphlet form and on its website, regarding subjects such as what constitutes a thorough eye examination and what they should know in buying spectacle or contact lenses?*

Background: The three public members in their Minority Report contend that the Board has failed to adequately publicize the Board's meetings, make those meetings easily accessible, or provided newsletters to its licensees and others on the Board's mailing lists. The Board maintains a website on the Internet that provides information about the Board, the requirements of the optometry licensing laws, licensees, and optometry. The Board's sunset report states that the Board will consider moving in the direction of online license renewal if a pilot project in which the Board of Registered Nursing is involved proves successful. The Board does note that the Internet could be further utilized to improve Board service to consumers by including information on consumer interest subjects such as purchasing contact lenses and spectacles (eyeglasses), and what constitutes a comprehensive eye examination. The Board has produced a consumer information pamphlet in the past but it has not been updated in recent years to include changes in the law or additional relevant information.